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4/24

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF

April 10, 2007

☐ Supplemental ☐ Adoption ☐ Consent ☒ Unanimous Consent Rules Committee Consultant Review

R -

O - 2007-107

Ice Cream and Mobile Food Units that Sell or Distribute Unauthorized Items (Toy Guns)

☒ Reviewed ☐ Initiated By PS&NS On 2/28/07 Item No. 2

RECOMMENDATION TO:

Approve

VOTED YEA: Maienschein, Faulconer, Young, Hueso

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

City Attorney's Memorandum dated February 26, 2007

COUNCIL COMMITTEE CONSULTANT

John Rivera

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: February 26, 2007

TO: Committee Members, Public Safety and Neighborhood Services (PS&NS)

FROM: John C. Hemmerling, Deputy City Attorney

SUBJECT: Illegal Street Vending Update

BACKGROUND

This memo is in response to questions that have arisen at PS&NS regarding potentially illegal vending by street vendors, specifically Ice Cream truck vendors. The Committee has asked the City Attorney to look into amending or supplementing the Municipal Code to restrict the type of sales by Ice Cream vendors, preferably prohibiting sales of items that are not perishable. Specifically, the Committee adopted the following motion on November 16th 2006 by Councilmember Young and seconded by Councilmember Faulconer, *"...refer this issue to the City Attorney's office to either create or amend the existing ordinance prohibiting the sale of realistic imitation firearms by street vendors, and return this issue to committee with a recommendation within 60 days"*.

QUESTIONS PRESENTED

Though the motion does not specifically contain questions, a review of the entire discussion at committee reveals two questions that underlie the motion and were never adequately addressed.

1. Can we further restrict the sales of "imitation firearms"¹ and "BB devices"² in the City of San Diego?

2. What laws do we currently have in place to conduct enforcement against street vendors who engage in illegal sales of items not authorized by law, or by permit?

¹ "Imitation firearm" means any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm. Penal Code § 12550.

² "BB device" means any instrument that expels a projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun. Penal Code § 12001.

SHORT ANSWERS

1. Generally no. The state has specifically occupied the field of laws governing these items and delegates no authority to local governments. Gov't Code § 53071.5.

2. The City has a few options with existing laws. First, San Diego Municipal Code (SDMC) § 42.0160 et seq (Mobile Food Units), is the primary enforcement section for Ice Cream trucks and other food vendors.³ This set of Municipal codes restricts sales to a very limited set of "food" items. Second, SDMC § 33.1401 et seq (Solicitors/Peddlers), which also governs all solicitors and peddlers, including Ice Cream trucks, provides the Police Chief with options when vendors violate laws. And lastly, Penal Code §§ 12551, 12552, 12555 & 12556, BB devices and Imitation Firearms, specifically prohibit sales and transfer of BB devices to minors, and prohibit almost everyone (with limited exceptions) from selling imitation firearms, and also do not allow individuals (including vendors) to display or expose imitation firearms in public.

ANALYSIS

A. State Laws

Penal Code § 12550-12556, BB device and Imitation Firearms, is a comprehensive set of laws that restrict BB guns and imitation firearms. Generally BB devices can not be sold or transferred to minors. "Transfer" means, someone giving away or buying a BB device, to or for a minor. The only exception to both sales and transfer is when the parent or guardian consents. Sales and even transfers of BB devices to minors is a misdemeanor. Imitation firearms cannot be sold to anyone, with a few exceptions. The only exceptions are for use in theatrical productions, military ceremonies, sales out-of-state, certified sporting events, or as an anti-gun display at local schools. Sale of an imitation firearm is subject to a civil action fine of not more than \$10,000, for each violation.

Title V of the California Government Code provides guidance and rules to local agencies regarding the ability to regulate and govern certain items that are considered within the state's control. Some issues are of statewide concern and the state does not relinquish any legislative authority to local agencies, therefore, "occupying the field" of regulations. Currently Gov't Code § 53071.5 regulates and occupies the field of imitation firearms and BB devices. "...the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in Section 12550 of the Penal Code, and that section shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles described in subdivision (g) of Section 12001 of the Penal Code". This section limits the City's ability to directly regulate imitation firearms and BB devices. However, this does not preclude the City from regulating the vendors who may potentially sell these items.

³ Mobile Food unit and Ice Cream trucks are legally synonymous for my discussion throughout this memo.

B. City of San Diego Municipal Code

The Municipal Code provides two areas of authority that apply to all Ice Cream vendors, and street vendors in general. SDMC § 33.1401 et seq (Solicitors/Peddlers) provides a set of requirements and rules for all solicitors in the City. Street vendors, food or otherwise, must get a solicitors permit prior to selling. Under SDMC § 33.0101 et seq, and continuing through to sections 33.0401-33.0406 authority is granted to the Chief of Police to regulate all solicitors and peddlers who are required to get a license pursuant to these sections. The Chief can suspend, revoke, or deny a permit for violations of the permit provisions. Those who operate without a permit are subject to criminal prosecution.

Per the Municipal Code all persons or businesses who sell food or are a "health regulated business"⁴ are required to get a health permit, SDMC § 41.03. Ice cream trucks and mobile food vendors are a regulated business.

Specifically, Ice cream trucks are regulated under SDMC § 42.0160 et seq, Mobile Food Units. A mobile food unit is described as follows: "...any food establishment which is readily movable, including, but not limited to, pushcarts and stands, and on or in which food is prepared, stored, displayed, served, distributed, transported, offered for sale or sold at retail or given away...", SDMC § 42.0160(a). Along with several sanitary and administrative requirements, Ice Cream trucks are limited in sales. According to SDMC § 42.0161 mobile food unit operations are limited to one or more of the following:

- (1) The serving of non-potentially hazardous or commissary wrapped food.
- (2) The preparation and serving of hot dogs.
- (3) The serving of beverages dispensed from a closed carbonation system.
- (4) The serving of food or beverages in hermetically sealed cans or bottles.
- (5) The serving of packaged ice cream.

The section does not allow for any other items to be sold in conjunction with food items. Under SDMC § 42.0132.3 any violation of these regulations is a misdemeanor.

RECOMMENDATIONS AND ACTION**A. Recommendation**

Make the following amendments to the San Diego Municipal Code. Changes to existing code language are underlined.

§42.0160 Mobile Food Units — Definitions

⁴ Health regulated businesses shall include...mobile food unit...SDMC § 42.0101.

(a) MOBILE FOOD UNIT means any food establishment which is readily movable, including, but not limited to, ice cream trucks, pushcarts and stands, and on or in which food is prepared, stored, displayed, served, distributed, transported, offered for sale or sold at retail or given away without charge. Mobile food unit shall not include food vending vehicles, regulated by Section 42.0130 of this Code; mobile food preparation units, regulated by Title 17, Chapter 5, Subchapter 2, Group 1, Article 10 of the California Administrative Code; or commercial coaches regulated by Title 25, Chapter 3, Subchapter 2, Articles 3 and 3.5 of the California Administrative Code.

§42.0161 Mobile Food Units — Operating Requirements

(a) Mobile food unit operations are limited to the sales or distribution of one or more of the following items:

- (1) The serving of non-potentially hazardous or commissary wrapped food.
- (2) The preparation and serving of hot dogs.
- (3) The serving of beverages dispensed from a closed carbonation system.
- (4) The serving of food or beverages in hermetically sealed cans or bottles.
- (5) The serving of packaged ice cream.

Ancillary utensils related to the consumption of the above items are not restricted; however, distribution or sale of any other item is not authorized.

(b) In addition to enforcing applicable federal, state and local laws the City intends to strictly enforce any violations of the California Penal Code regarding the sales, distribution and display of BB devices and Imitation Firearms. Violations of the mobile food unit sections may be pursued as either a regulatory or criminal violation.

B. Enforcement Action

Many vendors may be operating without knowledge of their illegal activity. I recommend the City first conduct an informational campaign to educate vendors on the laws. This informational campaign could also contain a warning that if the activity continues the City will take appropriate action, including permit revocations and criminal prosecutions. After a set warning period, enforcement through all available agencies would be necessary. A cooperative effort should be organized to include appropriate members of the City Schools, Police and the City Attorney's office. The Committee may want to make it a point to re-visit this issue in 6-8 months to see if progress has been made and make adjustments where necessary.

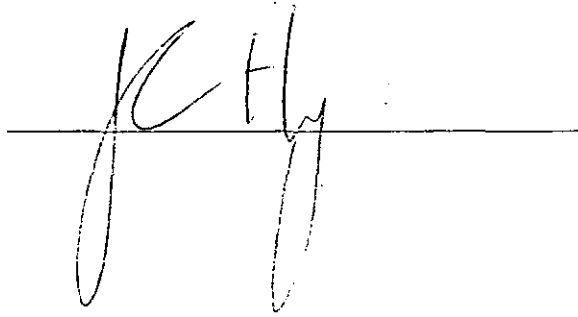
C. Alternate Recommendation

Without creating new laws, the City has several options that will assist in curbing the unnecessary, excessive and unlawful sales of BB devices and imitation firearms from Ice Cream vendors. Creating a new ordinance or amending a current ordinance is not required in light of the existing laws. The City can take appropriate actions to educate vendors and when necessary take enforcement actions based on the existing laws.

CONCLUSION

The proposed additional language will send a clear message that the City intends to curb this unlawful activity. Under both options above the police may take enforcement action to review street vendor's activities to ensure they are in compliance with state and local laws. If vendors are selling BB devices to minors or selling imitation firearms, then they are in violation of state law, local ordinances and their permit. Police, Code Compliance, or the County Health Department can take appropriate action to enforce the provisions against mobile food units. Appropriate actions would be to arrest, fine, or revoke a permit of the vendors. The authority under the Penal Code or Municipal Code exists as stated above and further prosecution could be sought through the City Attorney's Code Enforcement or Neighborhood Prosecution Unit.

JCH

A handwritten signature, likely "JCH", is written over a horizontal line. The signature is stylized, with the letters "J" and "H" being prominent and connected by a flourish.

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REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE)

N/A

51

4/24

TO:
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY3. DATE
03/27/07

4. SUBJECT:

AMENDMENT TO SAN DIEGO MUNICIPAL CODE RELATING TO REGULATIONS INVOLVING THE OPERATION OF MOBILE FOOD UNITS

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)

John Hemmerling, MS#59, 619-531.1535

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

ANNA LONERGAN @ 533-5838

7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

IT IS THE INTENT OF THE CITY COUNCIL TO STRENGTHEN AND CLARIFY LANGUAGE IN THE MUNICIPAL CODE REGULATING MOBILE FOOD UNITS. SEE ATTACHED MEMO TO PS&NS AS BACKUP MATERIAL.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>John Hemmerling</i>	3/27/07	8	DEPARTMENT	<i>Anna Loneragan</i>	3/28/07
2	Police Department	<i>Chief Payers</i>	3/28/07	9			
3				10	CITY ATTORNEY	<i>John Hemmerling</i>	3/26/07
4	LINCOLN PARK			11	ORIGINATING DEPARTMENT	<i>John Hemmerling</i>	3/26/07
5					DOCKET COORD:		
6							
7							

COUNCIL
PRESIDENT
MS☐ SPOB☒ CONSENT☐ ADOPTION☐ REFER TO:

COUNCIL DATE:

4/2/07

11. PREPARATION OF:

☐ RESOLUTION(S)☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

AMENDING SECTIONS 42.0160, 42.0161, AND 42.0166; ALL RELATING TO REGULATIONS INVOLVING THE SALES AND DISTRIBUTION OPERATIONS OF MOBILE FOOD UNITS.

11A. STAFF RECOMMENDATIONS:

Adopt the Ordinance.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):

ALL DISTRICTS

COMMUNITY AREA(S):

NA

ENVIRONMENTAL IMPACT:

THIS ACTIVITY IS NOT A PROJECT AND THEREFORE IS NOT SUBJECT TO CEQA, PURSUANT TO CEQA GUIDELINES SECTION 15060 (C) (3).

HOUSING IMPACT:

NA

OTHER ISSUES:

NA

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 42.0160, 42.0161, AND 42.0166
RELATING TO REGULATIONS INVOLVING THE
OPERATION OF MOBILE FOOD UNITS

This ordinance amends the San Diego Municipal Code [SDMC] by changing certain provisions of sections 42.0160, 42.0161, and 42.0166. Specifically, this ordinance targets mobile food vendors which are regulated under SDMC § 42.0160 et seq, Mobile Food Units. A mobile food unit is any food establishment which is readily movable, including, but not limited to, pushcarts and stands, and on or in which food is prepared, stored, displayed, served, distributed, transported, offered for sale or sold at retail or given away. The words “ice cream truck” will be added to the description of mobile food units. Also, along with several existing sanitary and administrative requirements, language will be added to clarify that the mobile food units are limited in the type of items they can sell.

This ordinance makes amendments to section 42.0160 by adding the language “ice cream truck,” making it clear that these sections apply to ice cream vendors. Section 42.0161 (b) makes clear that there is no exception to the types of items sold, and that enforcement will be taken, including applicable state law violations. Section 42.0166 further defines ice cream trucks.

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This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, since a written copy was made available to the City Council and the public prior to the day of passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

JCH:aml:lb
3/06/07
Or.Dept:CA
O-2007-107

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 42.0160, 42.0161, AND 42.0166 ALL
RELATING TO REGULATIONS INVOLVING THE
OPERATION OF MOBILE FOOD UNITS

WHEREAS, Chapter 4, Article 2, Division 1 of the San Diego Municipal Code is a comprehensive set of rules and regulations on the operation of mobile food units that are intended to protect the public; and

WHEREAS, the stated purpose and intent of those sections is to protect the public from unhealthy and unsanitary conditions, which can exist on mobile food units, by enacting regulations and provisions governing the rules under which vendors can sell or distribute certain food items in the City of San Diego; and

WHEREAS, per the current ordinance, mobile food unit vendors may sell only one or more of five listed food items; and

WHEREAS, some ice cream trucks are reportedly selling toys, fake firearms, and other goods contrary to the requirement to sell only certain foods; and

WHEREAS, it is the intent of the City Council to strengthen and clarify language in the Municipal Code regulating mobile food units; and

WHEREAS, the City Council wishes to amend Municipal Code sections 42.0160, 42.0161 and 42.0166 to provide better enforcement tools for those individuals charged with inspecting vendors and enforcing vending laws; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 2, Division 1, of the San Diego Municipal Code is amended by amending Sections 42.0160, 42.0161 and 42.0166 as follows:

§42.0160 Mobile Food Units — Definitions

- (a) MOBILE FOOD UNIT means any food establishment which is readily movable, including, but not limited to, ice cream trucks, pushcarts and stands, and on or in which food is prepared, stored, displayed, served, distributed, transported, offered for sale or sold at retail or given away without charge. Mobile food unit shall not include food vending vehicles, regulated by Section 42.0130 of this Code; mobile food preparation units, regulated by Title 17, Chapter 5, Subchapter 2, Group 1, Article 10 of the California Administrative Code; or commercial coaches regulated by Title 25, Chapter 3, Subchapter 2, Articles 3 and 3.5 of the California Administrative Code.

(b) through (c) [No change in text]

§42.0161 Mobile Food Units — Operating Requirements

- (a) Mobile food unit operations are limited to the sale or distribution of only one or more of the following:

(1) through (5) [No change in text]

Utensils related to the consumption of the above items may be provided by the mobile food units operation. The sale or distribution of any other items is prohibited.

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- (b) In addition to enforcing applicable federal, state and local laws the City intends to strictly enforce any violations of the California Penal Code regarding the sale, distribution and display of BB devices and Imitation Firearms. Violations of the mobile food unit sections may be pursued as both a regulatory and a criminal violation.
- (c) During operation, no food shall be stored, displayed, or served from any place other than on the mobile food unit. All food supplies, and eating, drinking and other utensils shall be kept on the mobile food unit. No auxiliary tables, utility carts or any other items not contained in or on the mobile food unit shall be used in conjunction with the dispensing of food.
- (d) Spare tires, related automotive equipment, tools relating to the mechanical operation of the mobile food preparation unit, or other items extraneous to the vending of food, shall not be stored in the food preparation or food storage areas.
- (e) During transportation and storage mobile food units shall be protected from contamination.
- (f) Food condiments shall at all times be protected from contamination and, where available for self-service, shall be prepackaged.
- (g) Potentially hazardous foods shall be maintained at temperatures at or below 45 degrees Fahrenheit, or at or above 140 degrees Fahrenheit.
- (h) Operators shall wear clean outer garments and keep themselves clean while handling food, utensils or food equipment. Proper hair restraint shall

be worn by food handlers. No food unit operator shall use tobacco in any form while operating food unit.

- (i) Utensils shall be used for dispensing food and shall be kept clean and in good repair.
- (j) Only single service utensils or containers may be provided for customer use and such articles shall be stored in their original, enclosed packages and kept free of contamination. They shall be kept in an enclosed dispenser for customer use. Straws shall be wrapped or dispensed from a sanitary dispenser.
- (k) All food shall be displayed, stored, dispensed and handled so as to minimize manual contact.
- (l) All mobile food unit surfaces and equipment shall be kept clean and in good repair.
- (m) Mobile food units shall operate from a commissary as defined in Section 28536, California Health and Safety Code, and shall be stored at the commissary when not in use. Commissaries shall have ample space to store and clean all mobile food units operated from them.
- (n) Mobile food units shall be thoroughly cleaned at the commissary after each day's use and shall be clean before each day of operation. Food products which are left after closing each day shall be properly stored and kept at proper temperatures.
- (o) The waste tank shall be emptied only at the commissary or at a location approved by the Health Officer.

- (p) Supplies shall be loaded on the mobile food units only at the commissary or from a service vehicle at the vending location. Any service vehicle providing additional food to a mobile food unit must itself have a valid mobile food unit permit and shall operate from a commissary as defined by Section 28536, California Health and Safety Code.
- (q) Persons who dispense food from a mobile food unit must provide or have available in a conspicuous place in the immediate vicinity of the unit a litter receptacle which is clearly marked with a sign requesting its use by patrons of the permittee or operator.
- (r) Each person operating a mobile food unit shall pick up, remove and dispose of all trash, refuse or litter consisting of materials at one time dispensed from the food unit, and any residue deposited on the street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the location where vending is occurring.

§42.0162 Mobile Food Units — Sanitation

[No change in text]

§42.0163 Mobile Food Units — Construction and Equipment Requirements

[No change in text]

§42.0164 Mobile Food Units — Construction and Equipment Requirement for Units upon which Unpackaged Foods are Carried

[No change in text]

§42.0165 Mobile Food Units — Duties of Permittees and Operators

[No change in text]

§42.0166 Mobile Food Units — Location of Operation

(a) through (c) [No change in text]

(d) This section does not apply to ice cream trucks that are engaged in the curbside vending or sale of frozen or refrigerated desserts commonly known as ice cream, or prepackaged non-potentially hazardous food or beverages.

§42.0167 Mobile Food Units — Health Permit

[No change in text]

§42.0168 Mobile Food Units — Revocation of Permits

[No change in text]

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


John Hemmerling
Deputy City Attorney

JH:al:lb
03/07/2007
Or.Dept:Police
O-2007-107

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000071

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: UNDERLINE

(O-2007-107)

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 2,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 42.0160, 42.0161, AND 42.0166 ALL
RELATING TO REGULATIONS INVOLVING THE
OPERATION OF MOBILE FOOD UNITS

§42.0160 Mobile Food Units — Definitions

- (a) MOBILE FOOD UNIT means any food establishment which is readily movable, including, but not limited to, ice cream trucks, pushcarts and stands, and on or in which food is prepared, stored, displayed, served, distributed, transported, offered for sale or sold at retail or given away without charge. Mobile food unit shall not include food vending vehicles, regulated by Section 42.0130 of this Code; mobile food preparation units, regulated by Title 17, Chapter 5, Subchapter 2, Group 1, Article 10 of the California Administrative Code; or commercial coaches regulated by Title 25, Chapter 3, Subchapter 2, Articles 3 and 3.5 of the California Administrative Code.
- (b) through (c) [No change in text]

§42.0161 Mobile Food Units — Operating Requirements

- (a) Mobile food unit operations are limited to the sales or distribution of only one or more of the following:

(1) through (5) [No change in text]

Utensils related to the consumption of the above items may be provided by the mobile food units operation. The sale or distribution of any other items is prohibited. are not restricted; however, distribution or sale of any other item is not authorized.

- (b) In addition to enforcing applicable federal, state and local laws the City intends to strictly enforce any violations of the California Penal Code regarding the sales, distribution and display of BB devices and Imitation Firearms. Violations of the mobile food unit sections may be pursued as both a regulatory and a criminal violation.

- (b)(c) During operation, no food shall be stored, displayed, or served from any place other than on the mobile food unit. All food supplies, and eating, drinking and other utensils shall be kept on the mobile food unit. No auxiliary tables, utility carts or any other items not contained in or on the mobile food unit shall be used in conjunction with the dispensing of food.
- (e)(d) Spare tires, related automotive equipment, tools relating to the mechanical operation of the mobile food preparation unit, or other items extraneous to the vending of food, shall not be stored in the food preparation or food storage areas.

- ~~(d)~~(e) During transportation and storage mobile food units shall be protected from contamination.
- ~~(e)~~(f) Food condiments shall at all times be protected from contamination and, where available for self-service, shall be prepackaged.
- ~~(f)~~(g) Potentially hazardous foods shall be maintained at temperatures at or below 45 degrees Fahrenheit, or at or above 140 degrees Fahrenheit.
- ~~(g)~~(h) Operators shall wear clean outer garments and keep themselves clean while handling food, utensils or food equipment. Proper hair restraint shall be worn by food handlers. No food unit operator shall use tobacco in any form while operating food unit.
- ~~(h)~~(i) Utensils shall be used for dispensing food and shall be kept clean and in good repair.
- ~~(i)~~(k) Only single service utensils or containers may be provided for customer use and such articles shall be stored in their original, enclosed packages and kept free of contamination. They shall be kept in an enclosed dispenser for customer use. Straws shall be wrapped or dispensed from a sanitary dispenser.
- ~~(j)~~(k) All food shall be displayed, stored, dispensed and handled so as to minimize manual contact.
- ~~(k)~~(l) All mobile food unit surfaces and equipment shall be kept clean and in good repair.
- ~~(l)~~(m) Mobile food units shall operate from a commissary as defined in Section 28536, California Health and Safety Code, and shall be stored at the

commissary when not in use. Commissaries shall have ample space to store and clean all mobile food units operated from them.

~~(m)~~(n) Mobile food units shall be thoroughly cleaned at the commissary after each day's use and shall be clean before each day of operation. Food products which are left after closing each day shall be properly stored and kept at proper temperatures.

~~(n)~~(o) The waste tank shall be emptied only at the commissary or at a location approved by the Health Officer.

~~(o)~~(p) Supplies shall be loaded on the mobile food units only at the commissary or from a service vehicle at the vending location. Any service vehicle providing additional food to a mobile food unit must itself have a valid mobile food unit permit and shall operate from a commissary as defined by Section 28536, California Health and Safety Code.

~~(p)~~(q) Persons who dispense food from a mobile food unit must provide or have available in a conspicuous place in the immediate vicinity of the unit a litter receptacle which is clearly marked with a sign requesting its use by patrons of the permittee or operator.

~~(q)~~(r) Each person operating a mobile food unit shall pick up, remove and dispose of all trash, refuse or litter consisting of materials at one time dispensed from the food unit, and any residue deposited on the street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area within a 25-foot radius of the location where vending is occurring.

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§42.0162 Mobile Food Units — Sanitation

[No change in text]

§42.0163 Mobile Food Units — Construction and Equipment Requirements

[No change in text]

§42.0164 Mobile Food Units — Construction and Equipment Requirement for Units upon which Unpackaged Foods are Carried

[No change in text]

§42.0165 Mobile Food Units — Duties of Permittees and Operators

[No change in text]

§42.0166 Mobile Food Units — Location of Operation

(a) through (c) [No change in text]

(d) This section does not apply to ice cream trucks that are engaged in the curbside vending or sale of frozen or refrigerated desserts commonly known as ice cream, or prepackaged non-potentially hazardous food or beverages.

§42.0167 Mobile Food Units — Health Permit

[No change in text]

§42.0168 Mobile Food Units — Revocation of Permits

[No change in text]